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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SABA TESFAGIORGIS, **Plaintiff and Appellant,** **v.** **STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,** **Defendant and Respondent.**	**A123833** **(San Mateo County Super. Ct. No. CIV473797)**

An arbitrator issued an award to plaintiff Saba Tesfagiorgis (plaintiff) under her automobile policy with defendant State Farm Mutual Automobile Insurance Company (State Farm), but attributed only 25 percent of her injuries to the accident covered under the policy. The trial court confirmed the arbitration award, and plaintiff appeals from the resulting judgment. Because plaintiff has not complied with California Rules of Court and has failed to provide an adequate record permitting review of the error she asserts, we must dismiss her appeal.

FACTUAL AND PROCEDURAL BACKGROUND

From the record provided by State Farm, it appears plaintiff was injured in a motor vehicle accident with an uninsured motorist in September 2004, and filed a claim with them Farm for medical payments and uninsured motorist (UM) benefits under an automobile policy in effect at the time of the accident. The parties submitted the matter

to binding arbitration (Code Civ. Proc., §§ 1280-1288.8) in March 2008. Shortly thereafter, the arbitrator issued an award of $683.50 in medical payments to plaintiff. The award reflects the arbitrator's conclusion that only 25 percent of plaintiff's injury could be allocated to the September 2004 accident.

In June 2008, State Farm filed a petition to confirm the arbitration award in the San Mateo County Superior Court. Plaintiff opposed the petition on the grounds that "there was no adequate review of medical records of [her] earlier injuries and medical treatment following a prior accident in 1997[, and that] she was not fairly heard as her husband . . . was not permitted to speak for her at the Arbitration hearing." The trial court issued an order confirming the arbitration award and entered judgment on the award.

Plaintiff filed a timely notice of appeal from the judgment.

DISCUSSION

We will not reach the merits of plaintiff's contentions on appeal because we conclude her procedural failings warrant dismissal of her appeal. In summary, it appears plaintiff challenges the judgment on essentially the same grounds she raised below in opposing confirmation of the arbitration award. She contends the judgment is unfair because her treating physician, Dr. Aubrey Swartz, issued an opinion on apportionment without reviewing her prior medical records and defense counsel did not provide him with these records. She also asserts that defense counsel "interfered during the arbitration process" by opposing her husband's participation at arbitration, claiming he was engaging in the unlawful practice of law. Finally, she points out evidence she claims is inconsistent with Dr. Swartz's apportionment.

Plaintiff's opening brief does not include a single citation to the record. (See Cal. Rules of Court, rule 8.204(a)(1)(C).)[1] "If a party fails to support an argument with the necessary citations to the record, that portion of the brief may be stricken and the argument deemed to have been waived." (*Duarte v. Chino Community Hospital* (1999)

[1] All rule references are to California Rules of Court.

72 Cal.App.4th 849, 856; accord, *Miller v. Superior Court* (2002) 101 Cal.App.4th 728, 743.) Plaintiff also has failed to support her contentions with any legal authority. We are not required "to make an independent, unassisted study of the record in search of error or grounds to support the judgment. [. . .] [E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 701, p. 769.) An appellant's failure to comply with the rules of court may, in our discretion, result in dismissal. (See *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.)

Such disposition is appropriate and, indeed, necessary in this case, as plaintiff's failure to provide record support for her assertions is symptomatic of a more fundamental problem: her failure to provide a record that establishes the basic facts and procedural underpinnings of her appeal. Plaintiff elected to file an appendix under rule 8.124 and to proceed without a record of the oral proceedings in the trial court. The appendix she filed, however, does not include the documents required by rule 8.124(b)(1) and consists solely of the transcripts of the hearings below, in violation of rule 8.124(b)(2)(B). (See *id.* [appendix must not "[c]ontain transcripts of oral proceedings that may be designated under rule 8.130"].) Plaintiff has effectively provided no record to satisfy her burden on appeal to demonstrate error. As a leading treatise emphasizes, "The most fundamental rule of appellate review is that an appealed judgment or order is *presumed* to be correct." (Eisenberg et al., Cal. Practice Guide: Civil Appeals (The Rutter Group 2009) 8:15, p. 8-5, original italics.) It is the appellant's duty to affirmatively show error. (*Denham v. Superior* Court (1970) 2 Cal.3d 557, 564; see *Defend Bayview Hunters Point Com. v. City and County of San Francisco* (2008) 167 Cal.App.4th 846, 859-860 [appellant's burden to overcome the presumption of correctness by providing an adequate record that affirmatively shows error].) The failure to provide a record that permits review of the asserted error warrants dismissal of an appeal. (*Ehman v. Moore* (1963) 221 Cal.App.2d 460, 463; *In re Marriage of Wilcox* (2004) 124 Cal.App.4th 492, 498.)

We realize that plaintiff is proceeding without the benefit of legal representation, but her status as a self-represented litigant does not exempt her from the rules of appellate procedure or relieve her of her burden on appeal. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) Her omissions are not mere technicalities, but leave us with no basis to reach the merits of her contentions or grant relief.[2]

DISPOSITION

The appeal is dismissed.

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Jones, P.J.

We concur:

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Simons, J.

_____

Needham, J.

[2] "The reviewing court has inherent power, on the motion of a party or on its own motion, to dismiss an appeal that it cannot or should not hear and determine." (9 Witkin, Cal. Proc., *supra*, § 739, p. 806.)